
**APPEALS BOARD
UTAH LABOR COMMISSION**

BRET J. ANGLESEY,

Petitioner,

vs.

**K.W. AVIATION and
UNINSURED EMPLOYERS FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0570

K.W. Aviation asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's award of benefits to Bret J. Anglesey under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Anglesey claims benefits from K.W. Aviation and the Uninsured Employers Fund for a work accident that occurred on November 2, 2004. Judge Marlowe held an evidentiary hearing, which included testimony from witnesses for both parties, and found Mr. Anglesey was an employee of K.W. Aviation and awarded benefits.

In its motion for review, K.W. Aviation argues that Mr. Anglesey was an independent contractor and that, other than the testimony he presented at the hearing, there was no evidence to support his claims.

FINDINGS OF FACT

The Appeals Board adopts Judge Marlowe's findings of fact. The facts relevant to the motion for review are summarized as follows:

In January 2003, Mr. Anglesey began working with K.W. Aviation as an independent flight instructor. He was not required to be there any specific amount of time and was paid \$25 an hour for any flight instruction he provided to clients referred through K.W. Aviation. No deductions were taken from the checks they paid him. Mr. Anglesey was also permitted to continue providing flight instruction to his own clients; these clients had their own planes and paid him directly.

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By July 2003, due to the number of new students coming in, K.W. Aviation asked Mr. Anglesey to come in 5-6 days a week with the main goal of increasing the business by bringing in more students and planes for leasing. Mr. Anglesey was shown how to enter invoices on the computer and he began performing other duties for K.W. Aviation, including taking care of the airplane maintenance records and punch lists, printing out monthly reports, ordering supplies, and keeping track of the money owed to flight instructors and plane owners who leased their planes to the company. Mr. Anglesey also recruited new flight instructors and obtained new plane leases for K.W. Aviation. In exchange for these new duties, K.W. Aviation paid Mr. Anglesey a monthly salary of \$1,000, in addition to the \$25 an hour he was paid for providing flight instruction to students referred to him through K.W. Aviation. K.W. Aviation still did not take any deductions from Mr. Anglesey's checks.

On November 2, 2004, Mr. Anglesey was flying with a student when the plane made a forced landing in a field. The client flying with Mr. Anglesey had requested flight instruction through K.W. Aviation and the plane in which they flew was a private plane leased to K.W. Aviation for flight instruction. Mr. Anglesey suffered extensive injuries during the landing.

DISCUSSION AND CONCLUSIONS OF LAW

The only issue before the Appeals Board is whether Mr. Anglesey was an employee of K.W. Aviation who was injured by accident out of and in the course of his employment or whether he was an independent contractor and therefore not entitled to benefits. K.W. Aviation contends that Mr. Anglesey began working with the company in January of 2003 as an independent contractor and that he continued to maintain that independent contractor status up until the accident. However, the record shows differently. Beginning in July of 2003, Mr. Anglesey assumed more duties and increased his presence in the office and was paid a regular monthly salary of \$1,000, in addition to being paid to provide flight instruction. In its motion for review, K.W. Aviation does not necessarily dispute Judge Marlowe's findings describing the various duties or schedule that Mr. Anglesey assumed by July 2003, but rather disputes that the company ever explicitly "imposed" these duties on Mr. Anglesey. Whether the duties he began performing were explicitly imposed on Mr. Anglesey by K.W. Aviation, the company accepted those services from him and in return paid him a monthly salary.

K.W. Aviation also argues that other than testimony provided at the hearing, Mr. Anglesey offered no proof of his claims. Both parties provided witness testimony as proof of their claims and Judge Marlowe, in her role as fact finder, had the opportunity to hear and determine the credibility of the witnesses and to make findings based on a reasonable interpretation of the testimony presented. Although K.W. Aviation disagrees with Judge Marlowe's findings and conclusions, there is no evidence that her findings and conclusions were unreasonable or against the weight of the evidence.

In summary, the Appeals Board finds that Mr. Anglesey was acting as an employee of K.W. Aviation and concurs with Judge Marlowe's finding that K.W. Aviation was Mr. Anglesey's

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employer under the Act. The Appeals Board affirms Judge Marlowe's decision awarding Mr. Anglesey benefits for the accident that arose out of and in the course of his employment.

ORDER

The Appeals Board affirms Judge Marlowe's decision. It is so ordered.

Dated this 24th day of March, 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.